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ORIGINAL

BEFORE THE ARIZONA CORPORATION



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**COMMISSIONERS**

**BOB STUMP, Chairman**  
**GARY PIERCE**  
**BRENDA BURNS**  
**SUSAN BITTER SMITH**  
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Arizona Corporation Commission

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MAR 21 2013

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IN THE MATTER OF THE APPLICATION OF )  
TUCSON ELECTRIC POWER COMPANY ) DOCKET NO. E-01933A-12-0291  
FOR THE ESTABLISHMENT OF JUST AND )  
REASONABLE RATES AND CHARGES ) **SOUTHERN ARIZONA HOME**  
DESIGNED TO REALIZE A REASONABLE ) **BUILDERS ASSOCIATION'S**  
RATE OF RETURN ON THE FAIR VALUE OF ) **POST-HEARING INITIAL BRIEF**  
ITS OPERATIONS THROUGHOUT THE )  
STATE OF ARIZONA. )

Pursuant to Administrative Law Judge Jane L. Rodda's oral directive during the March 4, 2013 Pre-Hearing Conference in the above-captioned and above-docketed proceeding ("Instant Proceeding"), Southern Arizona Home Builders Association ("SAHBA") hereby submits its Post-Hearing Initial Brief in the Instant Proceeding.

**I.**  
**DESCRIPTION OF SAHBA AND ITS**  
**INTERESTS IN INSTANT PROCEEDING**

SAHBA is a member trade organization with 340 dues-paying members, which includes Home Builders, Developers, and Associate Members. SAHBA was incorporated in 1952, and its coverage area from the National Association of Home Builders includes Pima, Cochise and Santa Cruz Counties. SAHBA is a 501(C)(6) organization under the United States Internal Revenue Code.

SAHBA represents building industry professionals ranging from builders, developers, land planners, architects, engineers, environmental consultants, trade contractors, banking and mortgage, real estate, and the many supporting disciplines necessary to create, sell, remodel, furnish and maintain new homes and communities throughout southern Arizona. SAHBA provides a venue for its members to share information and to network with other professionals involved in the home building industry.

1 SAHBA also serves as an advocate for its membership and keeps them apprised of  
2 changes in regulatory and governmental matters that will affect their businesses. In that regard,  
3 SAHBA actively participated as an advocate on behalf of its membership in proceedings before  
4 the Commission in Docket Nos. E-01933A-07-0402 and E-01933A-05-0650, which resulted in  
5 the Commission's issuance of Decision No. 72501. That decision reinstated Tucson Electric  
6 Power Company's ("TEP") historical line extension tariff provisions, which previously had been  
7 "removed" by TEP pursuant to the Commission's Decision No. 70628.

8 Against that background, SAHBA decided to intervene in the Instant Proceeding, in order  
9 to be in a position to endeavor to insure that changes TEP was proposing to certain of its filed  
10 rules and regulations did not have the effect of inadvertently detracting from the aforesaid  
11 beneficial aspects of Decision No. 72501 for SAHBA's members.<sup>1</sup>

12 In addition, as a part of its July 2, 2012 Application, TEP submitted proposals relating to  
13 the subject of Energy Efficiency ("EE"), which also is of interest to SAHBA and its members.  
14 More specifically, during the previously mentioned proceedings conducted in Docket Nos. E-  
15 01933A-07-0402 and E-01933A-05-0650, SAHBA had indicated its intent to continue to educate  
16 its members about and to promote the use of EE applications in new homes, where feasible. In  
17 that regard, SAHBA's members comply with the energy conservation requirements of  
18 international and local building codes; and, SAHBA's members have participated in TEP's  
19 "beyond code" EE program from time to time. As a consequence, SAHBA also concluded that  
20 its members must be in a position (i) to continue to inform themselves as to TEP's EE policies  
21 and programs, as the same may exist from time-to-time; and, as necessary or appropriate, (ii) to  
22 endeavor to influence the same within the context of the Instant Proceeding.<sup>2</sup>

23 In that regard, since it also was conceivable that existing TEP EE programs in which  
24 SAHBA members currently participate and/or hereafter might participate could be changed or  
25 eliminated as a result of the Instant Proceeding., SAHBA and its members wanted to be sure that  
26

27 <sup>1</sup> See Tr. 361, l. 10-13; and Tr. 362, l. 20 – Tr. 363, l. 6.

28 <sup>2</sup> See Tr. 361, l. 14-17; and Tr. 364, l. 2 – Tr. 366, l. 19.

1 the Commission was aware of their interests and concerns before it reached a final decision on  
2 TEP's proposals as the same related to EE. Thus, for this reason as well, SAHBA requested  
3 intervention.

4 Finally, as noted in its July 27, 2012 Application for Leave to Intervene in the Instant  
5 Proceeding, many of SAHBA's members are customers of TEP. They also are small businesses  
6 in nature, and electricity represents one of their ongoing costs of doing business. Inasmuch as a  
7 significant increase in TEP's rates for electric service could have an adverse financial impact  
8 upon these members, SAHBA decided to intervene and participate in the Instant Proceeding for  
9 this reason as well.<sup>3</sup>

10 **II.**  
11 **DISCUSSION OF SPECIFIC MANNER IN WHICH**  
12 **SETTLEMENT AGREEMENT SATISFACTORILY**  
13 **ADDRESSES INTERESTS OF SAHBA'S MEMBERS,**  
14 **AND THUS WARRANTS SAHBA'S SUPPORT**

15 The following excerpts from David Godlewski's February 15, 2013 prepared Direct  
16 Testimony In Support of Settlement Agreement contains a description of how the Settlement  
17 Agreement addresses and satisfactorily provides for the interests of SAHBA and its members  
18 described in Section I above:<sup>4</sup>

19 **"Q.5 Why does SAHBA support the Settlement Agreement?"**

20 A.5 By way of background, and as discussed in my prepared Direct  
21 Testimony, SAHBA intervened in this proceeding for two (2)  
22 reasons. First, SAHBA's members comply with the base-line energy  
23 efficiency requirements of international and local building codes,  
24 and SAHBA's members previously have participated in TEP's  
25 "beyond code" Energy Efficiency program from time-to-time. Since  
26 it was conceivable that existing TEP Energy Efficiency programs in  
27 which SAHBA members currently participate and/or hereafter might  
28 desire to participate could be changed or eliminated as a result of  
this proceeding, SAHBA concluded that it was in the interest of its  
members to intervene and participate in TEP's current rate case.  
Second, SAHBA wanted to be in a position to advocate, if  
necessary, for continuation of TEP's historic service extension tariff

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<sup>3</sup> Tr. 361, l. 18-24.

<sup>4</sup> Mr. Godlewski is the President of SAHBA.

provisions, which had been reinstated by the Commission in 2011 in Decision No. 72501. The Settlement Agreement addresses each of these objections [sic] in a manner acceptable to SAHBA.

**Q.6 Does the Settlement Agreement beneficially address these objectives for SAHBA and its members and if so, how?**

A.6 Yes, the settlement agreement satisfactorily addresses our objectives. We found the process to be open, transparent and informative. The Agreement is a benefit to our member companies as well as future home buyers. We appreciate the collaborative manner by which TEP worked with SAHBA and our attorney during the process to understand our objectives and work to address them.

Article VII (Energy Efficiency Resource Plan) of the Settlement Agreement specifically addresses the subject of Energy Efficiency. Section 7.1 provides that TEP will implement the Energy Efficiency Resource Plan proposed by the Commission's Staff in its prepared Direct Testimony in this proceeding. In that regard, and of particular importance to SAHBA's members, Section 7.3 provides that beginning March 1, 2013, TEP will resume funding of Energy Efficiency programs previously approved by the Commission.

This is an important feature of the settlement which has been reached, since TEP ceased funding of its various Energy Efficiency programs in the Spring of 2012. Included among those programs was a program relating to Energy Efficiency in connection with the construction of new homes. In that regard, SAHBA and its members are optimistic that TEP will resume funding of this program beginning the first of March, or approximately two (2) weeks from the date of filing of this prepared testimony with the Commission's Docket Control.<sup>[5]</sup> The restoration of these programs will provide an added incentive to SAHBA's home builder members who desire to

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<sup>5</sup> On March 1, 2013 TEP in fact did resume funding on EE programs which had previously been approved by the Commission, including the aforementioned program relating to the construction of new homes. In that regard, during the evidentiary hearing in the Instant Proceeding on March 7, 2013, Mr. Godlewski testified that TEP was projecting a prorated budget of approximately \$880,000 for its "Residential New Construction" EE program during the July 1, 2013 – December 31, 2013 time period, assuming Commission approval of the Energy Efficiency Resource Plan set forth at Section VII of the Settlement Agreement. [See Tr.364, line 2 -Tr. 365, l. 9.]

Mr. Godlewski's testimony in that regard appears to be confirmed by Table 1 of TEP Exhibit DGH-1, as attached to the February 15, 2013 prepared Direct Testimony of TEP President David G. Hutchens In Support of Settlement Agreement. More specifically, Table 1 shows the prorated budget amount for the "Residential New Construction" EE program to be \$883,423 within the context of the Energy Efficiency Resource Plan provided for in Article VII. In that regard, an identical amount also is projected for the "Residential New Construction" program, in the event that the Commission should decide instead to adopt the Existing EE Rules Option discussed in the aforesaid testimony of Mr. Hutchens, and depicted in Table 1 of TEP Exhibit DGH-2 to that testimony.

1 construct energy efficient homes that exceed base code  
2 requirements. It will also allow builders a marketing advantage they  
3 can chose to help sales during this critical time in the recovery of the  
4 home building industry. In turn, these homes will conserve energy  
and create financial savings from lower electric bills for home  
owners.

5 Article XVI (Rules and Regulations) of the Settlement  
6 Agreement addresses SAHBA's indicated second area of interest.  
More specifically, Section 16.1 provides as follows:

7 "16.1 TEP's revised Rules and Regulations  
8 shall be as agreed to between the Company and  
9 the Staff. The final version of the Rules and  
10 Regulations will be attached to the Company's  
testimony in support of the [Settlement]  
11 Agreement."

12 Included among those Rules and Regulations attached to TEP's July  
13 2, 2012 [Application and supporting] prepared Direct Testimony, in  
14 which certain language changes were proposed, were Sections 7 and  
8. These rules relate to TEP's service extension polices.

15 During a review of the proposed changes, SAHBA identified  
16 one area where some of the new language proposed by TEP created  
an ambiguity. That ambiguity pertained to the meaning of the word  
17 "phases." Accordingly, SAHBA discussed this matter with TEP and  
suggested some clarifying language, which was acceptable to TEP.  
18 The agreed upon language in Paragraph A.4 of Section 8 clarified  
that the words "number of phases" was a reference to voltage and  
point of delivery, and was not a reference to construction phases.

19 In turn, TEP presented SAHBA's suggested clarifying  
20 language to the Commission's Staff, which indicated that it no had  
objection to SAHBA's requested clarification. In that regard, it is  
21 SAHBA's understanding that SAHBA's clarifying language will be  
22 included in the "final version of the Rules and Regulations" to be  
attached to TEP's February 15, 2013 testimony in support of the  
23 Settlement Agreement pursuant to Section 16.1.<sup>6</sup> Thus, against this  
24 background, Article XVI and Section 16.1 are consistent with  
SAHBA's second intervention objective in this proceeding.

25 Finally, as noted in SAHBA's July 27, 2012 Application for  
26 Leave to Intervene, many of SAHBA's members are customers of

27  
28 <sup>6</sup> The clarifying language change was in fact made, and included in the final version of TEP's Rules and  
Regulations, as attached to TEP witness Dallas Dukes' February 15, 2013 prepared Direct Testimony In Support of  
Settlement Agreement.

1 TEP. Thus, an increase in TEP's rates and charges for electric  
2 service would directly impact the cost of doing business for such  
3 SAHBA members. In that regard, it is my understanding that the  
4 rate design resulting from the settlement discussions would have the  
least impact on small businesses. Thus, such a result would be an  
added benefit for SAHBA members in that rate class." <sup>7</sup>

5 As noted at the beginning of Section II of this Post-Hearing Initial Brief, the Settlement  
6 Agreement addresses and satisfactorily provides for the three (3) interest areas of SAHBA's  
7 members, as (i) identified in SAHBA's July 27, 2012 Application for Leave to Intervene, (ii)  
8 discussed in Mr. Godlewski's February 15, 2013 prepared Direct Testimony In Support of  
9 Settlement Agreement, and (iii) further described during his oral testimony at the evidentiary  
10 hearing on March 7, 2013.<sup>8</sup> Accordingly, on February 4, 2013, Mr. Godlewski executed the  
11 Settlement Agreement on behalf of SAHBA.

12  
13 **III.**  
**DISCUSSION OF GENERAL REASONS**  
14 **WHY SAHBA SUPPORTS**  
**SETTLEMENT AGREEMENT**

15 In addition to the reasons specific to SAHBA and its members discussed in Section II  
16 above, SAHBA also supports the Settlement Agreement for several general reasons, which  
17 SAHBA believes are applicable to all parties of record in the Instant Proceeding. These reasons  
18 include (i) Sections 1.3, 1.4 and 1.5 as set forth in Article I (Recitals), (ii) Sections 21.4 and 21.5  
19 of Article XXI (Commission Evaluation of Proposed Settlement) and (iii) Sections 22.1 through  
20 22.6 of Article XXII (Miscellaneous Provisions). In addition, and subject to Commission  
21 adoption of the Settlement Agreement without "material change," the Settlement Agreement  
22 allows for a timely conclusion of the Instant Proceeding without protracted litigation and the  
23 added consumption of time and costs attendant thereto.

24  
25  
26  
27 <sup>7</sup> See Exhibit SAHBA – 2 at page 2, line 7 – page 5, line 4.

28 <sup>8</sup> See Tr. 361, l. 25 – Tr. 362, l. 7.

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IV.  
CONCLUSION

Accordingly, and pursuant to Section 1.6 of the Settlement Agreement, SAHBA respectfully requests the Commission (1) to find that the terms and conditions of the Settlement Agreement are just and reasonable and in the public interest, along with any and all other necessary or appropriate findings, and (2) to approve the Settlement Agreement such that it and the rates contained therein may become effective on July 1, 2013.

Dated this 21<sup>st</sup> day of March 2013.

Respectfully submitted,



Lawrence V. Robertson, Jr., Of Counsel to Munger  
Chadwick, PLC  
Attorney for Southern Arizona Home Builders  
Association

The original and thirteen (13) copies  
of the foregoing will be filed this 21<sup>st</sup>  
day of March 2013 with:

Docket Control Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

A copy of the same served by e-mail  
or first class mail that same date to:

All Parties of Record

